

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4945 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL ENGINEER

Versus

ARJUN K AHIR

Appearance:

MR KETAN A DAVE for Petitioner

MR KALPESH N SHASTRI for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 09/12/97

ORAL JUDGEMENT

Heard Mr Dave for the petitioner and Mr Shastri for the respondent. RULE had been issued in this matter on 22.2.1997 making it returnable on 4.8.1997. Mr

Shastri has made submissions on behalf of the respondent and has not insisted on filing any reply-affidavit. The respondent was present in the Court when the matter was argued.

2 The respondent was working as a casual labourer under the petitioner. He worked under them during two different periods: initially, from May 1973 to February 1976 and from August 1989 to December 1991. It is his case that thereafter he has wrongfully been terminated whereas the case of the petitioner is that the respondent had left the job himself. The respondent-workman raised the dispute regarding his alleged illegal termination and the same came to be referred to the Industrial Tribunal (Central) being Reference (ITC) No.9 of 1994. The learned Member of the Industrial Tribunal having considered the evidence on record came to the conclusion that the workman was neither given the notice nor was he given any notice pay nor any retrenchment compensation prior to his termination. The learned Judge held that it was a case of termination and a case of breach of the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947. He therefore directed reinstatement with full back wages. The back wages were to be calculated from January 1992 onwards until reinstatement by finding out as to what were the average days put in by the respondent workman during 1989-92.

3 Mr Dave, learned advocate for the petitioner mainly submitted that the activity of the petitioner could not be considered to be an industry and he relied upon the judgement of the Supreme Court in the case of Bombay Telephone Canteen Employees Association v. Union of India reported in AIR 1997 SC 2817. Mr Shastri on the other hand pointed out that the said judgement has come to be specifically overruled by the Honourable Supreme court recently in the case of General Manager, Telecom v. S.Srinivasan Rao & Ors. reported in JT 1997(9) SC 234 by holding that the said judgement did not lay down correct law being contrary to the law laid down by the Bench of 7 Judges in Bangalore Water Supply and Sewerage Board case reported in (1978) 2 SCC 213.

4 That being the position, the main submission of Mr Dave does not survive. It appears that the concerned employee had lastly put in continuous service of more than two years when he came to be terminated from his services. In view of the fact that he had put in continuous service during that period and that he was neither given retrenchment compensation nor notice pay, no fault can be found with the order of the learned Judge

that the termination was illegal and was required to be interfered with.

5 Mr Dave however submitted that the workman concerned had apparently not taken steps expeditiously after his alleged termination at the end of December 1991. He made this submission on the basis of the Reference being made on 5th May 1994. As against that, Mr Shastri drew my attention to a letter sent by the petitioner to the Secretary, Government of India, Ministry of Labour, dated 22nd March 1993 making a grievance against an earlier communication of the Assistant Labour Commissioner dated 10th December 1992 submitting that he had illegally been terminated and raising a demand that he should be taken back in service or appropriate action be taken. In any event, fact remains that not much particulars are available with respect to the steps taken by the respondent - workman immediately. Mr Shastri is fair enough to state that in such an eventuality, if deemed fit, the award of back wages be reduced to 60%. He has taken the sense of the respondent-workman while making this statement. As stated above, the respondent-workman is present in the Court.

6 In view of the discussion made above, in my view, it would be proper that the operative part of the order be modified only to this limited extent that instead of full back wages, the employee concerned be awarded 60% back wages. The back wages will be calculated on the same basis as directed by the learned Member of the Industrial Tribunal. Apart from this modification, there is no need to interfere with the award in any other manner.

7 Mr Shastri states that the impugned award was given in October 1996. More than a year has gone since then and hence the petitioner may be directed to take steps in accordance with the award at the earliest. In view of this and having taken the sense from Mr Dave, it is directed that the petitioner shall reinstate the respondent by issuing necessary order on or before 31st December 1997 so that he joins duty on 1st January 1998. The petitioner shall also clear his back wages calculated on the aforesaid basis on or before 15.1.1998. Rule absolute to the aforesaid extent with no order on costs.

(mohd)